



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO BLUE RIDGE RESOURCE AUTHORITY FOR BLUE RIDGE RESOURCE AUTHORITY LANDFILL Solid Waste Permit No. 075**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Blue Ridge Resource Authority regarding the Blue Ridge Resource Authority Landfill, for the purpose of resolving violations of the Virginia Waste Management Act, Regulations, and the applicable Permit.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRA" means Blue Ridge Resource Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 et seq. BRRA is a "person" within the meaning of Va. Code § 10.1-1400.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Landfill" means the Blue Ridge Resource Authority Landfill, previously referred to as the Rockbridge County Landfill, located 225 Landfill Road in Buena Vista, Virginia, which is owned and operated by the BRRA.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Permit" means Solid Waste Permit (SWP) No. SWP075 which was issued under the Virginia Waste Management Act and the Regulations to BRRA, effective on September 22, 1972.
9. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
10. "Va. Code" means the Code of Virginia (1950), as amended.
11. "VAC" means the Virginia Administrative Code.
12. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. BRRA owns and operates the Facility, and is subject to the Permit.
2. The Facility has been operated as a Sanitary Landfill since the Permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. On June 28, 2018, BRRA notified DEQ that the unlined phase of the Facility last received solid waste for disposal on April 20, 2018.
4. On February 8, 2019, DEQ notified BRRA of the missed deadline for closure construction completion, and extended the completion date to June 1, 2019.

5. From March 2019 through August 2019, DEQ and BRRA officials met to discuss progress towards final closure. These meetings included project review, progress towards closure, and issues BRRA encountered with construction.
6. On September 4, 2019, BRRA requested a meeting with DEQ to discuss a potential extension request. On September 10, 2019, DEQ met with BRRA to discuss progress at the Facility. BRRA requested an additional extension for closure. DEQ received additional documentation on September 23, 2019 from BRRA, with an updated timeline. At that time, DEQ discussed potential elevation to enforcement as closure activities at the Facility were expected to be completed by October 2018 per the regulatory requirement.
7. On December 11, 2019, DEQ inspected the Facility and observed that the closure construction was not complete.
8. On December 13, 2019, DEQ issued NOV No. 2019-VRO-0027 to BRRA for failure to close the Facility by the extended deadline of June 1, 2019.
9. 9 VAC 20-81-160.C.2 states that: "The owner or operator shall complete closure activities of each unit in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive landfill."
10. On January 8, 2020, DEQ met with BRRA representatives to discuss the plans for the Facility's closure. BRRA provided documentation that closure activities were occurring at the Facility, but that poor integrity of the constructed cap required BRRA to hire a new construction contractor, which had occurred at the time of the meeting. BRRA agreed to submit a new closure schedule by the end of January 2020.
11. On January 27, 2020, BRRA submitted an updated construction schedule to reflect final closure by December 31, 2020. DEQ reviewed and approved the schedule, which will be incorporated into Appendix A of this Order
12. Based on documentation submitted to DEQ on September 23, 2019, results of the December 11, 2019 inspection, the September 10, 2019 and January 8, 2020 meetings, the Board concludes that BRRA has violated 9 VAC 20-81-160.C.2 as described in paragraphs C(3) through C(11), above.
13. In order for BRRA to return to compliance, DEQ staff and representatives of BRRA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders BRRA, and BRRA agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of BRRA for good cause shown by BRRA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No.2019-VRO-0027 dated December 13, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, BRRA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BRRA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BRRA declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by BRRA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BRRA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of

good faith or diligence on its part. BRRA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BRRA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BRRA. Nevertheless, BRRA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after BRRA has completed all of the requirements of the Order;
  - b. BRRA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to BRRA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BRRA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by BRRA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of BRRA certifies that he or she is a responsible officer authorized to enter into the terms and conditions of this Order and to execute and legally bind BRRA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of BRRA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, BRRA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 10<sup>th</sup> day of June, 2020.

  
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Amy T. Owens, Regional Director  
Department of Environmental Quality

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Blue Ridge Resource Authority voluntarily agrees to the issuance of this Order.

Date: 4-16-20 By: Ray York, DIRECTOR  
(Person) (Title)  
Blue Ridge Resource Authority

Commonwealth of Virginia

City/County of Rockbridge

The foregoing document was signed and acknowledged before me this 16<sup>th</sup> day of  
April, 2020, by Ray York who is  
Director of Blue Ridge Resource Authority on behalf of the  
Authority.

Stephen R. Lucas  
Notary Public

7656081  
Registration No.

My commission expires: 6-30-2023

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Phase I Closure Schedule**

- a. By October 31, 2020, BRRA shall substantially complete closure construction at the Facility.
- b. By November 30, 2020, BRRA shall complete final closure construction at the Facility.
- c. By December 31, 2020, BRRA shall submit the certified Construction Quality Assurance (CQA) report to DEQ for review and approval.

### **2. Reporting**

- a. No later than 14 days following a date identified in the above schedule of compliance, BRRA shall submit to DEQ a written notice of compliance or noncompliance with the scheduled item. In the case of noncompliance, notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

### **3. Contact**

Unless otherwise specified in this Order, BRRA shall submit all requirements of Appendix A of this Order to:

Eric R. Millard  
Enforcement Specialist Senior  
VA DEQ – Valley Regional Office  
540-574-7813  
[Eric.millard@deq.virginia.gov](mailto:Eric.millard@deq.virginia.gov)